

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 05-N-04412-RMT</b>
	)	
<b>MICHAEL K. MOBERLY,</b>	)	
	)	
<b>Member No. 196374,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<u>A Member of the State Bar.</u>	)	<b>ENROLLMENT</b>

**I. Introduction**

In this default matter, respondent **MICHAEL K. MOBERLY** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on June 16, 2005, in case No. S132790 (State Bar Court case No. 03-O-04745 and 03-O-05104 (Cons.)).

The court recommends that respondent be disbarred from the practice of law.

**II. Pertinent Procedural History**

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was properly served on respondent via certified mail, return receipt requested, at his official membership records address on November 10, 2005, and filed on that same date. On December 1, 2005, the NDC was returned by the U.S. Postal Service; the return receipt was unsigned.

On November 16, 2005, the State Bar attempted to contact respondent by telephoning him at his official membership records telephone number. However, a recorded message at that number advised that the number was no longer in service.

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<sup>1</sup>All references to rule 955 are to California Rules of Court, rule 955.

On November 15, 2005, the State Bar tried to obtain an address or phone number for respondent by doing a computer search. The search was unable to provide a phone number or address for respondent.

On November 17, 2005, the State Bar telephoned information and requested the telephone number for Michael K. Moberly in Stanton, California. The directory assistance operator advised that there was neither a residential nor a business listing for a Michael K. Moberly in Stanton, California, or anywhere else in Orange County, California.

On November 23, 2005, the parties were properly served with the Notice of Assignment and Notice of Initial Status Conference, which ordered, among other things, that the parties appear in person at the status conference which was calendared to take place on January 4, 2006.

As of December 12, 2005, the date of the filing of the motion for entry of default, respondent had failed to file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On January 4, 2006, the deputy trial counsel for the State Bar appeared, as ordered, for the status conference; respondent, however, did not appear. The Status Conference Order, which was filed on January 5, 2006, required that a certified copy of respondent's prior discipline be filed on or before January 11, 2006. The State Bar filed the prior record of discipline on January 6, 2006.

On motion of the State Bar, respondent's default was entered on January 12, 2006.<sup>2</sup> The order of entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code section

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<sup>2</sup>The court notes that the January 12, 2006 Order of Entry of Default contains a clerical / typographical error regarding the cutoff date for the State Bar to file further documents and the submission date for the matter. The order states that if the State Bar were going to file any further documents regarding the level of discipline, the cutoff date for filing would be January 11, 2006; and that if no further evidence were received, the matter would stand submitted on January 11, 2006. However, the correct cutoff date for the filing of documents regarding discipline and the correct submission date was February 1, 2006. As the State Bar raised no objection regarding the submission date, and there being no prejudice to the parties, the court deems the matter submitted as of February 1, 2006.

6007(e)<sup>3</sup> on January 15, 2006.

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on January 11, 2006.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on August 14, 1998, and has been a member of the State Bar since that time.

#### **B. Violation of California Rules of Court, Rule 955**

On June 16, 2005, the California Supreme Court in case No. S132790 (State Bar Court case No. 03-O-04745 and 03-O-05104 (Cons.)) suspended respondent from the practice of law for one year, stayed the execution of the suspension and actually suspended him for six months and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days respectively, after the effective date of the Supreme Court order. The order became effective July 16, 2005, and was duly served on respondent.

Rule 955(c) mandates that respondent "file with the Clerk of the State Bar Court an affidavit showing that he. . . has fully complied with those provisions of the order entered pursuant to this rule."

On June 16, 2005, the Office of the Clerk of the California Supreme Court served upon respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 955.

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<sup>3</sup>All references to sections are to the Business and Professions Code, unless otherwise indicated.

Respondent was to have filed the rule 955 affidavit by August 25, 2005; but as of December 12, 2005, the filing of the Motion for Entry of Default, he had not done so, and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. “Wilfulness” in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official address current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.<sup>4</sup>

### **C. Violation of Business and Professions Code Section 6103**

Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>5</sup>

### **B. Aggravation**

Respondent’s prior record of discipline is an aggravating circumstance. (St. 1.2(b)(i).) In the underlying matter, wherein respondent defaulted, respondent was suspended for one year, stayed, and was actually suspended for six months and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar for multiple acts of misconduct, including: (1) failing to maintain disputed funds in the amount of \$25,496 in his client trust account

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<sup>4</sup>Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply with rule 955 constitutes cause for disbarment or suspension and for revocation of any pending probation.

<sup>5</sup>All further references to standards are to this source.

(CTA); (2) issuing six checks from his CTA for personal or business purposes; (3) failing to cooperate with and participate in State Bar disciplinary investigations (two counts); and (4) engaging in an act of moral turpitude by issuing a check when he knew or should have known there were insufficient funds in the CTA to cover the check.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi.))

## **V. Discussion**

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

Respondent's misconduct involved a violation of his obligations under rule 955 of the California Rules of Court and section 6103. The standards applicable to this proceeding are standards 2.6 and 2.10. They provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client.

Standard 2.6 provides that culpability of a member of a violation of section 6103 must result in disbarment or suspension. Respondent's failure to obey the order of the Supreme Court to comply with rule 955 resulted in a finding of culpability under section 6103. Although the standards are guidelines and are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment. The court agrees with the recommendation of the State Bar.

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar*, (1988) 45 Cal.3d 1181, 1187.) By violating a Supreme Court order, respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys, although he has been given the opportunity to do so. Moreover, he has repeatedly failed

to participate in these disciplinary proceedings by defaulting in the underlying matter and in the instant case.

The court is unaware of any facts or circumstances that would justify a departure from the usual sanction of disbarment for respondent's wilful violation of rule 955 and his resulting violation of section 6103. One of the State Bar Court's obligations is to ensure that its disciplinary recommendations to the Supreme Court are fair and consistent. (*In re Young* (1989) 49 Cal.3d 257, 268.)

Thus, respondent's disbarment is necessary to protect the public, the courts and the legal profession, to maintain high professional standards and to preserve public confidence in the profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful disobedience of the Supreme Court order.

#### **VI. Recommended Discipline**

The court recommends that respondent **MICHAEL K. MOBERLY** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rule of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

#### **VII. Costs**

The court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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### **VIII. Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: March \_\_, 2006

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ROBERT M. TALCOTT  
Judge of the State Bar Court